

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 531 of 1999

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

MUNJA BHIMA VANDA

Versus

STATE OF GUJARAT

Appearance:

MR HRITAY BUCH for NANA VATY ADVOCATES for Petitioners
MS. HANSABEN PUNANI, APP for Respondent

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 09/03/2000

ORAL JUDGEMENT

1. This is a revision application under section 397 read with section 401 of the Code of Criminal Procedure, 1973, at the instance of the original accused. During the course of trial, when the evidence was completed and after the arguments of both the sides were completed, and when the case was pending judgement, the prosecution gave an application Exh.111, pointing out therein that two

documents viz. Mark 63/6 and 63/7, through error and oversight, have not been exhibited though proved on the record of the case. It is, however, the case of the prosecution itself as set out in the said application that the question as to whether these two documents should or should not be exhibited requires to be re-examined and that therefore the parties be heard on this aspect. This application contains this prayer in this form, without making a direct prayer to the effect that the said two documents be exhibited, because during the course of the examination of prosecution witness No.19 (Bhagwalbhai Dababhai Vaja) the same question had arisen, the accused had objected to giving Exhibit numbers to these documents and during the course of the deposition the Court had upheld the objections.

2. However, the application Exh.111 given by the prosecution was granted and the two documents were directed to be exhibited. It is this order which is the subject matter of the present revision.

3. It appears that the present revision is based upon a hyper-technical view of the order, in the belief that the documents in question, once they are exhibited, can be read in evidence against the accused or in favour of the prosecution. The fact remains that the contention of the accused is that the documents in question are hit by section 162 of the Criminal Procedure Code read with section 25 of the evidence Act. This contention will have to be decided in the light of the facts which may be on the record before the Court being a question of law or even a mixed question of law of fact.

4. The question whether the documents were rightly refused to be exhibited at an earlier stage or have wrongly been exhibited at a later stage of the trial is neither here nor there. The fundamentals of law stipulates that merely because a document is exhibited, the same does not constitute evidence unless it meets with all other requirements of law, and/or is not hit by any bar created by statute. It is, therefore, more practicable and in the interests of justice that the Sessions Court deals with this aspect with an open mind and while considering the prosecution case as a whole, arrives at a definite conclusion as to the evidentiary value of these two documents, in the light of section 162 of the Criminal Procedure Code and section 25 of the Evidence Act. It is further clarified that when the Sessions Court is considering this question in its judgement, it shall not necessarily be influenced by the earlier orders passed in this regard, either during the

deposition of the said prosecution witness no.19, or the order below Exh.111.

5. In view of the aforesaid observations and directions, learned counsel for the petitioner does not press this revision for any further relief. The same is accordingly disposed of. Rule is discharged. Interim relief stands vacated. D.S. permitted.
